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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE LUIS CRUZ,

Defendant and Appellant.

G043564

(Super. Ct. No. 07SF1076)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W.  
Michael Hayes, Judge. Affirmed as modified.

Richard Jay Moller, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, and Kevin Vienna,  
Deputy Attorney General, for Plaintiff and Respondent.

Defendant Jose Luis Cruz attacked a man with a baseball bat for having an affair with his wife. A jury convicted him of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1); count 1); making criminal threats (Pen. Code, § 422; count 2); and conspiracy to commit assault with a deadly weapon (Pen. Code, §§ 182, subd. (a)(1), 245, subd. (a)(1); count 3). It further found true the allegation defendant personally inflicted great bodily injury. (Pen. Code, § 12022.7, subd. (a).) The court sentenced him to six years in prison, consisting of three years for aggravated assault, three consecutive years for the great bodily injury enhancement, and two year concurrent terms for making criminal threats and conspiracy to commit assault. It also imposed various fines.

Defendant contends the concurrent two-year sentence he received for conspiracy to commit aggravated assault should have been stayed under Penal Code section 654. “[B]ecause there was no showing that the object of the conspiracy was any broader than commission of the underlying crimes [citations]” (*People v. Lewis* (2008) 43 Cal.4th 415, 539), the Attorney General agrees, as do we, that defendant cannot be punished for both the underlying assault and the conspiracy. The sentence for the latter is ordered stayed under Penal Code section 654.

Defendant also argues the imposition of three \$30 assessments under Government Code section 70373 (all further statutory references are to this code unless otherwise stated) violates the rule that new statutes are presumed to act prospectively because he committed the crimes in 2007 and the statute did not become effective until January 1, 2009. Based on the language of the statute, which requires the assessment “be imposed on every conviction” (§ 70373, subd. (a)(1)), several recent cases have held the triggering event is the date of conviction, not the date of the offenses. (*People v. Mendez* (2010) 188 Cal.App.4th 47, 61; *People v. Phillips* (2010) 186 Cal.App.4th 475, 477; *People v. Davis* (2010) 185 Cal.App.4th 998, 1000; *People v. Castillo* (2010) 182 Cal.App.4th 1410, 1414.) We find these cases persuasive and adopt their analysis.

Citing *People v. Alford* (2007) 42 Cal.4th 749, in which the Supreme Court relied in part on another fee statute's enactment as an urgency measure to conclude it was intended to apply to all convictions after it took effect (*id.* at p. 754), defendant contends "no similar intent [is] evident in [section 70373's] legislative history . . . ." But as *Castillo* noted, the statutory language on which *Alford* principally relied is nearly identical to the parallel language in section 70373. (*People v. Castillo, supra*, 182 Cal.App.4th at p. 1414.) By the time section 70373 was adopted, this language had already been given the effect defendant seeks here to avoid. *Castillo* reasoned this fact triggered the general rule that "'when a term has been given a particular meaning by a judicial decision, it should be presumed to have the same meaning in later-enacted statutes or constitutional provisions.' [Citations.]" (*People v. Castillo, supra*, 182 Cal.App.4th at p. 1414.) As *Castillo* concluded, "The Legislature's decision to word section 70373 like the court security fee statute, *after* the latter statute had been interpreted by *Alford*, to apply to convictions occurring after that statute's effective date shows that the Legislature intended the new assessment to apply to convictions occurring after the new statute's effective date." (*Ibid.*) The fact there was no immediate effective date, as the statute was enacted on September 26, 2008 but did not become operative until January 1, 2009, does not does not affect this analysis.

Defendant maintains "a conviction is nothing more than a conclusive judicial finding of the existence of a criminal act" and "the conduct that led to the imposition of the criminal assessment was not the conviction itself, as that is not conduct, but the underlying criminal offense." On the contrary, "a law addressing the conduct of trials still addresses conduct in the future. . . . Such a statute 'is not made retroactive merely because it draws upon facts existing prior to its enactment . . . . [Instead,] [t]he effect of such statutes is actually prospective in nature since they relate to the procedure to be followed in the future.' [Citations.]" (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 288.) "In general, application of a law is retroactive only if it attaches new legal

consequences to, or increases a party's liability for, an event, transaction, or conduct that was *completed* before the law's effective date. [Citations.] Thus, the critical question for determining retroactivity usually is whether the last act or event necessary to trigger application of the statute occurred before or after the statute's effective date. [Citations.]" (*People v. Grant* (1999) 20 Cal.4th 150, 157.)

Section 70373 does not address past conduct. Its purpose is unrelated to the offenses that a defendant may have committed and is not intended to punish the defendant. (See *People v. Castillo, supra*, 182 Cal.App.4th at p. 1413.) The last act necessary to trigger application of the statute is defendant's convictions, regardless of the nature of the offenses committed or when they occurred. Because defendant's convictions occurred after the statute's operative date, no retroactivity problem exists and the fees were properly imposed.

The two-year concurrent sentence on count 3 is ordered stayed pursuant to Penal Code section 654 with the stay to become permanent upon defendant's completion of the sentence imposed on count 1. The trial court is directed to prepare an amended abstract of judgment consistent with this opinion and forward it to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

O'LEARY, J.

FYBEL, J.